

K.K., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Barnegat, NJ, Employer**

Appearances:

Robert D. Campbell, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

On May 29, 2018 appellant, through counsel, filed a timely appeal from a February 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the February 16, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right rotator cuff tear causally related to the accepted December 10, 2015 employment incident.

FACTUAL HISTORY

On March 1, 2016 appellant, then a 57-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 10, 2015, she sustained a right rotator cuff tear when she slipped and stumbled on a rocky walkway while in the performance of her federal employment duties. She indicated that the injury occurred when returning to her long life vehicle (LLV) and that, when her shoulder jerked to break her fall, she felt immediate severe pain. Appellant did not stop work.

In a December 11, 2015 report, Dr. Nagalakshmi Shetty, Board-certified in rheumatology and internal medicine, reported that, on December 7, 2015, appellant experienced a sudden jerking movement to her right shoulder. This pain resolved with icing the right shoulder. She further reported that appellant experienced another “jerky jolt” to her right shoulder on December 10, 2015 when, while delivering mail, she stumbled on rocks and caught herself from falling. This time the pain was severe. Dr. Shetty diagnosed right shoulder degenerative arthritis, right shoulder pain, and primary osteoarthritis of both first carpometacarpal joints.

In medical reports dated December 14, 2015 and February 2, 2016, Dr. Rosemarie DeSantis, a Board-certified rheumatologist, noted a history of the December 10, 2015 work incident and diagnosed primary osteoarthritis of the right shoulder and primary osteoarthritis of right and left hands. In her February 2, 2016 report, Dr. DeSantis also diagnosed a tear of the right rotator cuff.

In a February 22, 2016 report, Dr. Nicholas Jarmon, a Board-certified orthopedic surgeon, reported that appellant had immediate onset of right shoulder pain while at work on December 10, 2015 when she fell and caught herself. Appellant denied prior shoulder pain. Dr. Jarmon provided an assessment of full-thickness rotator cuff tear and recommended surgery. He indicated that the tear appeared to be acute in nature as there was no significant muscle atrophy and appellant denied a history of prior trauma.

In a March 7, 2016 report, Dr. Jarmon continued to assess an acute full-thickness rotator cuff tear and recommend surgery. He also opined that the tear was causally related to appellant’s work as it had occurred at work. In a March 7, 2016 duty status report (Form CA-17), Dr. Jarmon provided work restrictions.

In a March 11, 2016⁴ attending physician’s report (Form CA-20), Dr. Jarmon checked a box marked “yes,” indicating that appellant’s status post tear of the supraspinatus repair was causally related to the December 10, 2015 work incident.

On March 17, 2016 Dr. Jarmon performed a right shoulder arthroscopic labral debridement, biceps tenotomy, and arthroscopic supraspinatus repair. He opined, in an attending

⁴ The date of the report appears to be incorrect as it refers to appellant’s rotator cuff repair which took place March 17, 2016.

physician's report (Form CA-20), that appellant was totally disabled from work for the period March 17 through June 17, 2016. Postsurgical progress reports and Form CA-17 reports from Dr. Jarmon were also received.

By development letter dated May 9, 2016, OWCP advised appellant that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that the employing establishment did not controvert continuation of pay (COP) or challenge the merits of the case and payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim had not been formally adjudicated and appellant's claim was being reopened because she had not returned to full-time work. OWCP explained the additional medical evidence needed to establish her claim and afforded her 30 days to submit such evidence.

In response, OWCP received appellant's May 26, 2016 statement⁵ a February 10, 2016 magnetic resonance imaging (MRI) scan report, which noted a full-thickness two centimeter supraspinatus tear, and a February 22, 2016 right shoulder x-ray report, which noted mild osteopenia and mild acromioclavicular joint arthrosis.

On May 17 and June 8 and 13, 2016 OWCP received additional treatment notes and Form CA-17 duty status reports from Dr. Jarmon. It also received May 17, 2016 physical therapy notes.

By decision dated June 15, 2016, OWCP denied appellant's claim, finding that the medical evidence submitted did not contain a comprehensive medical opinion which established that the diagnosed conditions were causally related to the accepted December 10, 2015 employment incident. It found that there was no rationalized medical opinion of record explaining how appellant's accepted employment incident caused, contributed to, or aggravated her medical conditions.

On July 12, 2016 appellant requested a review of the written record by an OWCP hearing representative.

In a June 29, 2016 report, Dr. Jarmon noted that, on December 10, 2015, appellant was returning to her LLV after delivering parcels when she stumbled on a rocky path and caught her balance with her right arm. Appellant experienced an immediate onset of pain, but continued on her route, relying on her left shoulder. She denied a history of prior injury to the right shoulder. Dr. Jarmon noted that a cortisone injection administered by Dr. Shetty the next day provided only temporary relief. He indicated that the February 10, 2016 right shoulder MRI scan revealed a full-thickness tear of the supraspinatus, for which the March 17, 2016 surgery was performed. With regards to medical causality, Dr. Jarmon opined that the mechanism of injury described by appellant could cause a full-thickness rotator cuff tear. He explained that the timing of her symptoms coincided with the timing of the injury. Also, the fact that there was no significant muscle atrophy appreciable on the MRI scan suggested that it was an acute, not a chronic, tear.

By decision dated December 5, 2016, an OWCP hearing representative reviewed the evidence of record and affirmed the denial of appellant's claim. He found that Dr. Jarmon had not

⁵ Appellant reported that she stopped work on March 7, 2016 and had not returned. In a June 2, 2016 Form CA-17 duty status report, Dr. Jarmon took appellant off work until July 5, 2016.

provided a rationalized medical opinion explaining how stumbling and the jerky jolt appellant described would have been a mechanism of injury sufficient to have torn a rotator cuff.

On May 23, 2017 appellant, through counsel, requested reconsideration. Counsel presented arguments as to why reconsideration should be granted.

In a January 16, 2017 progress report, Dr. Jarmon indicated that “there is always a question of causality with regards to this injury.” He noted that the injury occurred at work on December 10, 2015 when appellant tripped and lost her balance. Dr. Jarmon indicated that she did not fall or grab onto anything. Rather, she regained her balance by moving her arms around and kind of catching herself in midair. That was when the pain started. Dr. Jarmon opined that this was a reasonable mechanism to cause a full-thickness cuff tear. He also noted that the MRI scan findings were consistent with the acute tear. Dr. Jarmon concluded that it was his opinion that the injury was related to the mechanism of injury appellant described.

In a February 16, 2017 report, Dr. Jarmon again noted that appellant was moving her arms around to basically regain her balance in air. He indicated that this movement caused increased sudden stress of the tendon-bone interface of the rotator cuff attachment. If enough force was placed on that interface, Dr. Jarmon advised that it could potentially cause a tear based on the strength of the contracture of the rotator cuff.

In a March 27, 2017 report, Dr. Jarmon noted that appellant temporarily lost her balance, which she regained by moving her arms in the air. He also noted that appellant immediately developed pain and weakness in the shoulder following the incident. A right shoulder MRI scan confirmed a full-thickness unretracted tear of the rotator cuff with no significant muscular atrophy. Dr. Jarmon advised that the mechanism described could certainly cause enough contraction of the rotator cuff to result in a full-thickness tear. Due to the temporal relationship between when this incident occurred, the development of appellant’s symptoms, and the fact that she was completely asymptomatic with regards to that shoulder prior to the incident, Dr. Jarmon concluded that the mechanism described would in fact cause the rotator cuff tear later found on MRI scan.

By decision dated February 16, 2018, OWCP denied modification of its December 5, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear causally related to the accepted December 10, 2015 employment incident.

Appellant submitted a December 11, 2015 report from Dr. Shetty who noted two separate incidents concerning a sudden jerking movement of appellant's right shoulder which resulted in pain. Her painful right shoulder from the first incident, which occurred four days prior to her visit, resolved with icing the shoulder. The second incident was the December 10, 2015 employment incident, when appellant stumbled and caught herself from falling. Dr. Shetty provided an assessment of right shoulder degenerative arthritis, right shoulder pain, and primary osteoarthritis of both first carpometacarpal joints. However, she did not provide an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *C.L.*, Docket No. 18-0540 (issued October 17, 2018); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *See A.H.*, Docket No. 18-0722 (issued November 6, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *See A.H.*, *supra* note 10; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ These reports, therefore, are insufficient to establish appellant's claim.

The medical reports from Dr. DeSantis provide diagnoses of primary osteoarthritis of right shoulder, primary osteoarthritis of the hands, and a right rotator cuff tear. While Dr. DeSantis provided diagnoses of appellant's conditions, she did not provide an opinion on causal relationship. Thus, the reports from Dr. DeSantis are also insufficient to support appellant's claim.¹⁴

Multiple reports were received from Dr. Jarmon dated February 22, 2016 to March 27, 2017, with Form CA-17 duty status reports provided on an approximate monthly basis. Dr. Jarmon assessed a full-thickness right rotator cuff tear, which he surgically corrected on March 17, 2016. In his treatment notes, surgical and Form CA-17 report, Dr. Jarmon offered no opinion on causation. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵

In his medical reports dated February 22 and March 17, 2016 as well as reports received on May 17 and June 8 and 13, 2016 Dr. Jarmon described appellant's December 10, 2015 employment incident and indicated that appellant had denied any prior right shoulder pain. However, as Dr. Jarmon did not provide an opinion on causal relationship, these reports are of no probative value.¹⁶

In his March 7 and June 29, 2016 reports and in a March 11, 2016 Form CA-20, Dr. Jarmon opined that the rotator cuff tear was causally related to the December 10, 2015 work incident. His opinions regarding causal relationship in these reports, however, were conclusory in nature and did not explain how the December 10, 2015 employment incident caused or aggravated appellant's shoulder injury. Therefore, these reports are of limited probative value.¹⁷

In January 16, February 16, and March 27, 2017 reports, Dr. Jarmon reported that appellant had regained her balance by moving her arms around and kind of catching herself in midair. In his January 16, 2017 report, he indicated, in generalized terminology, that this was reasonable mechanism to cause a full-thickness cuff tear, noting that the MRI scan findings were consistent with an acute tear. In his February 16 and March 27, 2017 reports, Dr. Jarmon elaborated on how the mechanism of injury could cause a full-thickness rotator cuff tear. He indicated, in his February 16, 2017 report, that if enough force was seen at the tendon-bone interface of the rotator cuff attachment then it could potentially cause a tear based on the strength of the contracture of the rotator cuff. In his March 27, 2017 report, Dr. Jarmon attempted to further explain causal relationship, however, his explanation was still of limited probative value. His opinion that "if enough force was seen..." "then it could potentially cause" was couched in speculative terms. Medical opinions which are speculative or equivocal in character have little

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *B.B.*, Docket No. 18-1036 (issued December 31, 2018).

probative value.¹⁸ Without specifically explaining with medical certainty that the December 10, 2015 stumble without a fall physiologically caused or contributed to appellant's diagnosed condition, Dr. Jarmon's opinion on causal relationship is equivocal in nature and of limited probative value.¹⁹

Appellant also submitted diagnostic test reports. However, the diagnostic reports are also of diminished probative value. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.²⁰

The physical therapy reports are also insufficient to satisfy appellant's burden of proof because physical therapists are not considered physicians as defined under FECA.²¹ Consequently, their treatment notes are insufficient to establish entitlement to FECA benefits.²²

For these reasons, the Board finds that appellant has not met her burden of proof to establish a December 10, 2015 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear causally related to the accepted December 10, 2015 employment incident.

¹⁸ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁹ *See R.A.*, Docket No. 17-1472 (issued December 6, 2017).

²⁰ *See R.T.*, Docket No. 17-2019 (issued August 24, 2018).

²¹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

²² *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board